

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WENDYZ RODRIGUEZ,

Plaintiff,

-v-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
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23-CV-4554 (JMF)

ORDER ADOPTING
REPORT AND
RECOMMENDATION

JESSE M. FURMAN, United States District Judge:

Defendant’s motion to dismiss this case was referred to Magistrate Judge Barbara C. Moses for a Report and Recommendation. *See* Docket Nos. 7, 26. In the Report and Recommendation filed on January 10, 2024, Magistrate Judge Moses recommended that the motion be granted. *See* Docket No. 28.

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). A district court “must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to.” Fed. R. Civ. P. 72(b)(3); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997). To accept those portions of the report to which no timely objection has been made, however, a district court need only satisfy itself that there is no clear error on the face of the record. *See, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). This clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. *See, e.g., Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).


In the present case, the Court advised the parties via Order dated January 11, 2024, that they had fourteen days from service of the Report and Recommendation to file any objections, and warned that failure to timely file such objections would result in waiver of any right to object. *See* Docket No. 29. That order also expressly called Plaintiff's attention to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1). Nevertheless, as of the date of this Order, no objections have been filed and no request for an extension of time to object has been made. Accordingly, Plaintiff has waived the right to object to the Report and Recommendation or to obtain appellate review. *See Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *see also Caidor v. Onondaga County*, 517 F.3d 601 (2d Cir. 2008).

Despite the waiver, the Court has reviewed the petition and the Report and Recommendation, unguided by objections, and finds the Report and Recommendation to be well reasoned and grounded in fact and law. Plaintiff's Complaint must be dismissed because it was not timely filed — i.e., within 65 days of her receipt of the Appeals Council Notice on May 3, 2022 — and neither the Complaint nor the record supports a contrary conclusion. Accordingly, the Report and Recommendation is ADOPTED in its entirety.

The Clerk of Court is directed to terminate Docket No. 19, close the case, and mail a copy of this Order to Plaintiff.

SO ORDERED.

Dated: February 5, 2024
New York, New York



JESSE M. FURMAN
United States District Judge